

Appl. No. 09/981,389  
Response Dated July 17, 2006  
Reply to Office Action of February 16, 2006

### **REMARKS**

Claims 1-16, and 18 are presently pending in this application. Claims 1, 5, 7, 10, 11, 12, and 16 have been amended. Claims 17 and 19-26 have been canceled. No new matter has been added. The applicant respectfully requests that the Examiner favorably reconsider and allow the pending claims.

### **35 U.S.C. §102 Rejection**

In the Office Action, claims 1-5, 7-10, and 12-16 stand rejected under 35 U.S.C. §102(e) as being anticipated by United States Patent Application 2002/0097885 to Birchfield et al. ("Birchfield"). The applicant respectfully traverses the rejection, and requests that the Examiner reconsider and withdraw the §102(e) rejection.

To establish a *prima facie* case of anticipation under 35 U.S.C. § 102, the Examiner must supply a single prior art document that alone teaches "... every aspect of the claimed invention either explicitly or impliedly." (emphasis added) (See M.P.E.P. §706.02) If the Examiner cannot show that the single prior art document asserts each and every element and limitation of the applicant's claims, then the Examiner has failed to establish a *prima facie* case of anticipation for that claim. To overcome the Examiner's anticipation rejection, the applicant must only demonstrate that the cited prior art document fails to teach one element or limitation present in the claim.

Currently amended independent claim recites in a salient portion:

... a processing device to determine a spatial location of a source of the acoustic waves and in response to the spatial location of the source to at least one of  
    delay an output of the first or second microphone, or  
    selectively disable the first or second microphone.

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Currently amended independent claims 7 and 12 recite a similar limitation. The Examiner alleges that Birchfield element 340 and paragraph [0042] teach a processing device to determine a spatial location of a source of the acoustic waves. For example, Birchfield paragraph [0042] discloses an acoustic source direction module that receives sample elements of each pair of microphones and thereafter, with a mapping sub-module, maps each sample element to a surface of potential acoustic source locations that is assigned the sample value. Further, the acoustic source direction module includes “. . . a resampling sub-module to resample values on each cell of a common boundary surface for each pair of microphones, a combining module to calculate a weighted value on each cell of the common boundary surface from the resampled data for two or more pairs of microphones, and a bearing vector sub-module to calculate a likely direction to the acoustic source . . .” The applicant assert however that Birchfield element 340 and paragraph [0042] fail to disclose that the processing device may thereafter, in response to the spatial location of the source to at least one of delay an output of the first or second microphone or selectively disable the first or second microphone as recited by currently amended independent claim 1. More specifically, the applicant respectfully points out that neither paragraph [0042] nor those that follow indicate that the spatial location of the source is in any way utilized to thereafter control the microphones. Accordingly, the applicant respectfully affirms that currently independent claims 1, 7, and 12 are patentable as each recites at least an element not taught by Birchfield. The applicant further confirms that dependent claims 2-6, 8-11, 13-16, and 18 are patentable as each depends from a patentable independent claim.

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**35 U.S.C. § 103 Rejection**

In the Office Action, claims 6, 11, 18-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Birchfield et al. (U.S. Patent Application 2002/0097885) in view of United States Patent Number 5,058,419 to Nordstrom et al. ("Nordstrom"). The applicant herein cancels claims 19-26. For at least the reasons offered with respect to the Examiner's §102 rejection, the applicant asserts that dependent claims 6, 11, and 18 are patentable as each depends from a patentable independent claim.

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### CONCLUSION

For at least the foregoing reasons, the applicant submits that he has overcome the Examiner's rejections and he has the right to claim the invention as set forth in the listed claims. The Examiner is invited to contact the undersigned at 360-696-8602 to discuss any matter concerning this application.

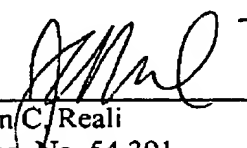
The applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, the applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

The applicants believe that claims 1-16, and 18 are in allowable form. Accordingly, the applicant earnestly solicits a timely Notice of Allowance to this effect.

Respectfully submitted,

KACVINSKY LLC

July 17, 2006  
Dated

  
Jon C. Reali  
Reg. No. 54,391  
Under 37 C.F.R. §1.34(a)

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